

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #8	CCRB Case #: 201700665	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/22/2017 10:13 PM	Location of Incident: 163 West 10th Street	Precinct: 06	18 Mo. SOL 7/22/2018	EO SOL 7/22/2018	
Date/Time CV Reported Sun, 01/22/2017 10:51 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/26/2017 11:29 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Luis Gutierrez	22109	949072	006 PCT
2. POM Michael Susana	15165	931286	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Susana	Off. Language: Police Officer Michael Susana used offensive language when speaking to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Luis Gutierrez	Abuse: Police Officer Luis Gutierrez issued an improper summons to § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On January 22, 2017, § 87(2)(b) filed the following complaint by phone with IAB, generating original log number 2017-2706. The CCRB received the complaint on January 26, 2017.

On January 22, 2017, at approximately 10:13 p.m., § 87(2)(b) was driving his taxi and got into a dispute about fare payment with three passengers he had driven to 163 West 10<sup>th</sup> Street in Manhattan. The passengers were § 87(2)(b) and § 87(2)(b). § 87(2)(b) called 911, and Police Officer Michael Susana and Police Officer Luis Gutierrez of the 6<sup>th</sup> Precinct responded. They determined that the passengers had paid § 87(2)(b) and then instructed § 87(2)(b) to leave the scene. § 87(2)(b) refused to leave. PO Susana allegedly told him, “You are retarded, so now let’s see what I’m gonna do” (**Allegation A**). PO Gutierrez eventually issued § 87(2)(b) four summonses: § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b) (BR01) (**Allegation B**). After PO Gutierrez handed § 87(2)(b) the summonses, § 87(2)(b) asked why the officers were giving him the summonses, and PO Susana allegedly said, “Because you are a retard” (**Allegation A**).

The investigation did not obtain any video footage.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined the option of mediation.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR02).
- PO Michael Susana has been a member of the NYPD for 14 years and has had three previous CCRB allegations involving three cases, none of which was substantiated. He also has had four allegations from two cases resulting from incidents which occurred after this incident, all of which are closed and none of which was substantiated (see officer history).
- PO Luis Gutierrez has been a member of the NYPD for six years and has had two previous CCRB allegations involving one case, neither of which was substantiated (see officer history).
- § 87(2)(g)

### Findings and Recommendations

#### Explanation of Subject Officer Identification

- § 87(2)(b) gave almost entirely identical descriptions of the officers, except that he described one as having black hair and the other as having worn a winter hat during the incident. He identified the officer with black hair as the one who allegedly used offensive language. PO Susana has black hair, while PO Gutierrez is completely bald. In addition, § 87(2)(b) viewed photos of each officer, and said he recognized PO Susana as the officer who called him “retarded.” § 87(2)(g)

- **Allegation A—Offensive Language: Police Officer Michael Susana used offensive language when speaking to § 87(2)(b)**

When filing the complaint by phone with IAB, § 87(2)(b) alleged that PO Susana called him a “retard” (BR03; BR04). In his telephone statement, § 87(2)(b) recounted that PO Susana instructed him to leave the scene multiple times before requesting his license (BR05). § 87(2)(b) provided the license, and PO Susana called him a “retard.” § 87(2)(b) further alleged that, after he received the four summonses, he told the officers they were unprofessional and unethical. They laughed and PO Susana said, “You are a retard.”

During his in-person interview, § 87(2)(b) initially recounted that PO Susana used the word “retard” when speaking to him, but did not place it in context (BR06). He also recounted PO Susana telling him something to the effect of, “You’re not listening to what I am telling you. You gonna see what I’m gonna do.” When later asked to place PO Susana’s use of the word “retard” in context, § 87(2)(b) alleged that PO Susana told him, “You are retarded, so now let’s see what I’m gonna do.” § 87(2)(b) further alleged that, when he later asked the officers why they had given him so many summonses, PO Susana replied, “Because you are a retard.”

§ 87(2)(b) and § 87(2)(b) all denied hearing any officer use profanity with § 87(2)(b) or call him a “retard” or “retarded” (BR07; BR08; BR09). § 87(2)(g) and § 87(2)(b) both maintained § 87(2)(g) that § 87(2)(b) was belligerent and unreasonable, and that the officers had acted cordially toward him. § 87(2)(b) believed the officers acted “very shittily” toward § 87(2)(b) and were “just being dicks.”

None of the passengers was present when the officers issued the summonses to § 87(2)(b) § 87(2)(g)

PO Susana denied that he ever called § 87(2)(b) a “retard” or “retarded” (BR10). He recounted that he told § 87(2)(b) to leave the scene more than ten times, and eventually told him he would be issued a summons if he did not comply. PO Susana also recounted that § 87(2)(b) yelled at PO Gutierrez when PO Gutierrez handed him the summonses. He denied that he told § 87(2)(b) he was getting the summonses because he was a “retard” or “retarded.” At one point, when denying that he used those words, PO Susana volunteered that he believed he used the word “ridiculous.” He thought that, at one point, he told § 87(2)(b) “You’re being ridiculous right now.” PO Gutierrez denied that PO Susana ever used the words “retard” or “retarded” with § 87(2)(b) (BR11).

§ 87(2)(g)

- **Allegation B—Abuse of Authority: Police Officer Luis Gutierrez issued an improper summons to § 87(2)(b)**

PO Gutierrez issued § 87(2)(b) a summons for not having a fire extinguisher under Vehicle and Traffic Law 375-9 (BR01).

PO Gutierrez recounted that he asked § 87(2)(b) during the incident if he had a fire extinguisher, and § 87(2)(b) said he did not know (BR11). PO Gutierrez asked § 87(2)(b) to open the rear hatch of the vehicle, and § 87(2)(b) did so. PO Gutierrez saw that the vehicle did not have a fire extinguisher, so he decided to issue the summons to § 87(2)(b).

PO Gutierrez stated during his CCRB interview that all taxi drivers are required to have fire extinguishers in their vehicles, and that they must present them if asked to do so by an NYPD officer. However, PO Gutierrez could not state with certainty the origin of the requirement; he guessed it was either “an Administrative Code or a TLC Code.” When asked how he learned that taxi drivers must have fire extinguishers, PO Gutierrez replied, “I’m a police officer.” When pressed to explain the source of his knowledge, PO Gutierrez said he could not specifically recall when he learned that taxi drivers must have fire extinguishers. He also knew that taxi drivers are required to have various other items and equipment, but he could not name any of them.

PO Gutierrez admitted that this incident was the first in which he issued a summons for a violation of the fire extinguisher requirement. He explained that, when writing the summons, he used his personal cellphone to search for the correct statute. When presented with a copy of the summons, PO Gutierrez confirmed that “375-9” was the VTL statute he wrote on it. After being read the text of that statute, which indicates it only applies to vehicles with a capacity of at least ten passengers, PO Gutierrez said, “It looks like I made an error in writing the code.” However, when asked if there was another VTL statute which did apply to taxis, PO Gutierrez said, “From the top of my head, I don’t know.” The undersigned asked PO Gutierrez if he meant that he simply accidentally wrote the incorrect statute number on the summons, and he said that was correct. The investigator then asked him if, while searching on his cellphone, he found a VTL statute which did apply to the supposed requirement that taxis have fire extinguishers, and PO Gutierrez replied, “I knew they needed it. I guess I wrote the wrong code.”

The undersigned searched the Vehicle and Traffic Law, the NYC Administrative Code, and the TLC Rules, and could not find any requirement that taxis have fire extinguishers. On April 21, 2017, the undersigned spoke by phone to Daniel Goddin, Assistant General Counsel in the TLC Legal Department. Mr. Goddin confirmed that there is no requirement that taxis have fire extinguishers, and specifically confirmed that no such requirement exists in the TLC Rules.

§ 87(2)(a) 160.50, § 87(2)(g)

New York State Vehicle and Traffic Law §375-9 requires that at least one hand fire extinguisher be equipped to “every omnibus operating upon the public highways of the state having a carrying capacity of ten or more passengers” (BR12).

The VTL statute noted on the summons clearly did not apply to § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

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Squad: 8

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Investigator:	_____	<u>Daniel Giansante</u>	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date